

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

MICHAEL MALOTT #467434,

Plaintiff,

v.

Case No. 2:17-cv-00079  
HON. Janet T. Neff

UNKNOWN LACROSSE, et al.,

Defendants.

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REPORT AND RECOMMENDATION

This is a civil rights action brought by state prisoner Michael Malott pursuant to 42 U.S.C. § 1983. Plaintiff filed a motion to voluntarily dismiss this case. (ECF No. 57). Defendants' filed a response. (ECF No. 58). Fed. R. Civ. P. 41(a)(2) provides that the Court may dismiss an action upon Plaintiff's request "on terms the court considers proper."

It is recommended that the court grant Plaintiff's request (ECF No. 57) and dismiss Plaintiff's complaint with prejudice.

Should the court adopt the report and recommendation in this case, the court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the undersigned recommends granting Defendants' motion for summary judgment, the undersigned discerns no good-faith basis for an appeal. Should the court adopt the report and recommendation and should Plaintiff appeal this decision, the court will assess the \$505 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless Plaintiff is

barred from proceeding *in forma pauperis*, e.g., by the “three-strikes” rule of § 1915(g). If he is barred, he will be required to pay the \$505 appellate filing fee in one lump sum.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within fourteen (14) days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR 72.3(b). Failure to file timely objections constitutes a waiver of any further right to appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). See also *Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley  
TIMOTHY P. GREELEY  
UNITED STATES MAGISTRATE JUDGE

Dated: January 17, 2019